

James P. Donohue
Chief United States Magistrate Judge

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

KYLE LYDELL CANTY,

Plaintiff,

vs.

CITY OF SEATTLE, et al.,

Defendants.

NO. 2:16-CV-01655-RAJ-JPD

CITY OF SEATTLE DEFENDANTS'
CONSOLIDATED RESPONSE TO
SEVERAL MOTIONS FILED BY
PLAINTIFF

I. RELIEF REQUESTED

Defendants City of Seattle and Officers Marshall Coolidge, Sean Culbertson, Timothy Renihan, and Hancock ("City of Seattle Defendants") file this response to the following motions filed by Plaintiff and request that each be denied for the reasons set forth herein:

- "Motion Pursuant to Rule 65 (FRCP) Injunctions and Restraining Orders," [Dkt. 49], construed by the court pursuant to its July 12, 2017 order as a Motion for Preliminary Injunction [Dkt. 52];
- "Motion Pursuant to Rule 5.1 (FRCP) Constitutional Challenge to a Statute – Notice Certification and Intervention" [Dkt. 63];
- "Motion Pursuant to 'Under Color of State Law' Definition" [Dkt. 70];

CITY OF SEATTLE DEFENDANTS' CONSOLIDATED RESPONSE
TO SEVERAL MOTIONS FILED BY PLAINTIFF
NO. 2:16-CV-01655-RAJ-JPD

- 1 • “Motion Pursuant to LCR 26 (a), (c), (f) Duty to Disclose General Provisions Governing
- 2 Discovery” [Dkt. 61];
- 3 • “Motion Pursuant to Rule 51 (FRCP) Instructions to the Jury” [Dkt. 69]; and
- 4 • “Motion Pursuant to LCR 16 Pretrial Conferences Scheduling Management” [Dkt. 62]

5 The City of Seattle Defendants also join in the yet-to-be filed responses to these motions by Co-
6 Defendants King County, Gail Bonicalzi, and Melinda Hasegawa.

7 **II. STATEMENT OF FACTS**

8 Plaintiff Pro Se has brought this civil rights action against the City of Seattle Defendants,
9 as well as King County and several of its employees. Plaintiff has filed numerous documents that
10 he has labeled as “motions” since initiating this action. Plaintiff originally filed complaint on
11 November 5, 2016, and eventually filed an amended complaint on June 1, 2017. Dkts. 5, 38.
12 Plaintiff’s Complaint alleges the City of Seattle Defendants violated his rights under the
13 Fourth, Fifth, and Eighth Amendments to the United States Constitution during his detention
14 on a civil commitment warrant. *Id.* Since filing his complaints, Plaintiff has filed a series of
15 documents that he has labeled as “motions,” although many do not make specific requests for
16 relief from the court. The City of Seattle Defendants have previously responded to several of
17 these prior motions.¹ This memorandum is the response by the City of Seattle Defendants to
18 the most recent six motions, which are identified above.

19 **III. STATEMENT OF ISSUES**

20 (1) Should Plaintiff’s request for a preliminary injunction be denied, because he has
21 not satisfied the requirements of Fed. R. Civ. P. 65?

22 (2) Should Plaintiff’s Motion Regarding the Constitutionality of RCW 71.05 be
23 denied, because he has not alleged any claim in his complaint making a constitutional challenge to
24

25 ¹ Defendants herein previously filed responses to Plaintiff’s “Motion Pursuant to LCR 6(a) Computing
26 and Extending Time,” “Motion Pursuant to LCR 5.2 (a) Redaction of Filings” and “Motion and Declaration of
Defendants [sic] Motive and Retaliation,” Dkts. 47, 48, 53, 54, 55, and 65.

1 the statute, has not adequately identified a constitutional challenge to the statute in his motion, and
 2 has not served the Washington State Attorney General as required by FRCP 5.1, 28 U.S.C. § 2403,
 3 and RCW 7.24.110?

4 (3) Should Plaintiff's motion regarding jury instructions be denied as premature and
 5 improper under the court's Local Rules?

6 (4) Should the remainder of Plaintiff's outstanding motions be denied, because they
 7 are either premature or else do not make a proper request for relief as required by Fed. R. Civ. P.
 8 7?

9 IV. EVIDENCE RELIED UPON

10 The City of Seattle Defendants rely on the pleadings and the court's file herein.

11 V. ARGUMENT

12 A. Plaintiff Has Not Satisfied Fed. R. Civ. P. 65's Requirements for a Preliminary 13 Injunction

14 Rule 65 governs the issuance of preliminary injunctions. Fed. R. Civ. P. 65. In order to
 15 obtain a preliminary injunction, Plaintiff must show that:

- 16 1) he is likely to succeed on the merits of the action;
- 17 2) he is likely to suffer irreparable harm in the absence of preliminary relief;
- 18 3) the balance of equities tips in his favor; and
- 19 4) an injunction is in the public interest.

20 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 112 (9th Cir. 2009); *Winter v. Natural Res. Def.*
 21 *Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). "[I]njunctive relief is an
 22 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled
 23 to such relief." *Winter*, 555 U.S. at 22; *Davis v. Abercrombie*, 903 F. Supp. 2d 975, 993-94 (D.
 24 Haw. 2012). A preliminary injunction should only be granted where the merits of the case clearly
 25 favor one party over the other. *See Remlinger v. Nevada*, 896 F. Supp. 1012, 1015 (D. Nev.
 26 1995). Cases best suited to preliminary injunction are those where the parties do not dispute the

important facts but simply disagree about the legal consequences of those facts. *Remlinger*, 896 F. Supp. at 1015.

The plaintiff bears the burden of persuasion. *Mich. Rehab. Clinic Inc., P.C. v. City of Detroit*, 310 F. Supp. 2d 867, 869 (E.D. Mich. 2004). A preliminary injunction is the strong arm of equity that should not be extended to cases which are doubtful or do not come within well-established principles of law. *Mich. Rehab. Clinic*, 310 F. Supp. 2d at 870. The proof required for the plaintiff to obtain a preliminary injunction is more stringent than the proof required to survive a summary judgment motion. *Id.*

Here, Plaintiff has not put forward any evidence (other than his own self-serving statements) that he is likely to prevail on the merits of his case. Even if Plaintiff has shown a likelihood of prevailing on the merits (which he has not), Plaintiff has not even addressed the remaining factors listed above—likelihood of irreparable harm without injunctive relief, the balance of equities, and the public interest—to demonstrate that a preliminary injunction is warranted in this case. Plaintiff bears the burden of persuading the Court that he is entitled to a preliminary injunction, and he has not carried his burden. The Court must accordingly deny Plaintiff's request.

B. Plaintiff's Motion Regarding the Constitutionality of RCW 71.05 is Improper, Because None of Plaintiff's Claims in Plaintiff's Complaint Challenges the Statute, Plaintiff Has Not Adequately Stated a Constitutional Challenge to the Statute, and Plaintiff Has Not Served the State Attorney General

Without citing any authority, Plaintiff's motion regarding RCW 71.05 questions whether the entire statute is constitutional. To the extent Plaintiff is attempting to ask the court to hold some provision of the statute unconstitutional in this case, his motion is improper.

As a preliminary matter, the alleged unconstitutionality of the statute is not raised in Plaintiff's complaint. The subject matter of Plaintiff's lawsuit is limited by the allegations and claims pleaded. Fed. Rule Civ. Proc. 8 (a). Plaintiff's Complaint has not sought a declaratory

1 judgment that RCW 71.05 is unconstitutional. Unless this court grants a proper motion to amend
2 the complaint to add a new claim, this matter is not properly before the court.

3 Additionally, Plaintiff has not sued or given notice to the proper parties to challenge the
4 constitutionality of a state statute. If an action alleges that a state statute is unconstitutional, the
5 plaintiff must serve the state's Attorney General. FRCP 5.1; 28 U.S.C. § 2403; RCW 7.24.110;
6 *see also* FRCP 19. There is nothing in the record indicating that Plaintiff has taken this required
7 step.

8 Even if it were not for the above deficiencies, Plaintiff has not made any specific
9 constitutional challenge to the statute. Plaintiff has not stated whether his challenge is a facial one
10 or an as-applied challenge. Plaintiff has also not shown that he satisfies the requirements of
11 justiciability or standing to make a challenge to the statute's constitutionality. *See Lujan v.*
12 *Defenders of Wildlife*, 504 U.S. 555, 560-61, 119 L.Ed.2d 351, 112 S.Ct. 2130 (1992). Plaintiff
13 fails to state what part of the statute he is asserting is unconstitutional or even to identify any
14 specific provision of the constitution that he is alleging the statute infringes upon. Washington
15 courts have previously held that the statute satisfies due process. *In Re Johnson*, 179 Wn. App.
16 579, 591, 322 P.3d 22 (2014) (holding "procedures in the emergency detention statute provide
17 adequate protection against erroneous detention."). Because Plaintiff has not met his burden on
18 any of these dispositive issues, his motion must be denied on its face.

19 **C. Plaintiff's Motion Regarding Jury Instructions Is Premature and Improper Under**
20 **the Court's Local Rules**

21 Plaintiff has filed another motion requesting that the court give his proposed jury
22 instruction (WPI 340.01 Introductory Civil Rights Instruction), attached to the motion as
23 Exhibit 3. The City of Seattle Defendants oppose this motion as being premature. The court
24 has not yet issued a case management order or other order directing the filing of proposed jury
25 instructions. *See* Fed. R. Civ. P. 16(b)(1), (3) (court will issue scheduling order containing
26 case deadlines); Fed. R. Civ. P. (a)(1) (a party may file and furnish to every other party written

1 requests for the jury instructions it wants the court to give a the close of evidence or at any
 2 earlier reasonable time that the court orders). Additionally, Plaintiff's request and his attached
 3 proposed jury instruction do not conform to this Court's prescriptions for jury instructions
 4 outlined in the local rules. *See* W. Wash. LCR 51(e)-(i) (providing guidance on the procedure
 5 and substance of proposed jury instructions.) The court should deny Plaintiff's Motion based
 6 on its prematurity and non-conformance with court rules.

7 **D. Plaintiff's Other Motions Are Either Premature or Else Do Not Make Any Proper**
 8 **Request for Relief from the Court**

9 The remainder of the motions filed by Plaintiff – those relating to the element of “under
 10 color of state law” in § 1983 and that refer to discovery and pre-trial conferences, do not state any
 11 proper request for relief from the court. For example, Plaintiff requests that “the Courts [sic] give
 12 all Defendants the legal definition to ‘under color of state law’ . . .” Plaintiff's motion is not
 13 focused on any particular defendant, and it provides no factual background about what actions he
 14 is claiming were taken under state law. To the extent that this legal element of his claim against
 15 individual defendants in this matter is disputed, the issue can be decided following any needed
 16 discovery, either by the court on a pre-trial summary judgment motion or by the fact finder at trial.
 17 Plaintiff's other motions concerning pretrial conferences and discovery simply state information
 18 about discovery and Plaintiff's plan to submit certain exhibits at trial, but they do not make any
 19 request to the court for any relief.

20 As the City of Seattle Defendants pointed out previously in their response to a prior
 21 motion filed by Plaintiff, motions must: 1) be in writing; 2) state with particularity the ground
 22 for seeking the order; and 3) state the relief sought. *Id.* Courts have generally given liberal
 23 interpretation to Rule 7(b)'s requirement that motions “state with particularity the grounds
 24 therefor.” *Harkins v. Ford Motor Co.*, 437 F2d 276 n.1 (3d Cir. Pa. 1970). However, Rule
 25 7(b)'s requirement that moving party state with particularity grounds for his motion is not
 26 intended to be merely a matter of form but real and substantial. *Steingut v. National City Bank*,

36 F Supp 486, 487 (D.N.Y. 1941). “[M]otions giving no reasons have no effect” and should be denied. *Stephenson v. Deutsche Bank AG*, 282 F. Supp. 2d 1032, 1041 n.7 (D. Minn. 2003), quoting *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 957 F.2d 515, 516 (7th Cir. 1992). Courts have usually interpreted Fed. R. Civ. P. 7(b) strictly, refusing to recognize requests for relief not specified in the moving papers. *De Lorenzo v. Fed. Deposit Ins. Corp.*, 268 F. Supp. 378, 381 (S.D.N.Y. 1967). Because the remainder of Plaintiff’s outstanding motions neither request any particular relief from the court nor give any grounds for the court to take a particular action in this case, they should be denied as improper under Rule 7.

VI. CONCLUSION

For all the forgoing reasons, Plaintiff’s numerous motions described above should be denied.

DATED this 28th day of July, 2017.

s/ John R. Nicholson

JOHN R. NICHOLSON WSBA #30499

Freimund Jackson & Tardif, PLLC

701 5th Avenue, Suite 3545

Seattle, WA 98104

Telephone: (206) 582-6001

Facsimile: (206) 466-6085

Johnn@fjtlaw.com

Attorneys for Defendants City of Seattle,
Officer Marshall Coolidge, Sean Culbertson,
Timothy Renihan and Officer Hancock

CERTIFICATE OF SERVICE

I certify that on the 28th day of July, 2017, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Pro se Plaintiff, Kyle Lydell Canty #216035994 King County Jail (Seattle) 500 5 th Ave. Seattle, WA 98104	(X) U.S. Mail
Samantha D. Kanner, WSBA #36943 Deputy Prosecuting Attorney King County Prosecuting Attorney's Office 500 Fourth Avenue, 9 th Floor Seattle, WA 98104 (206) 296-8820 SamanthaKanner@kingcounty.gov	(X) Electronic Service

DATED this 28th day of July, 2017, in Seattle, Washington.

s/Kathie Fudge
 KATHIE FUDGE, Legal Assistant to
 GREGORY E. JACKSON
 701 5TH Avenue, Suite 3545
 Seattle, WA 98104
 kathief@fjtlaw.com